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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,299	12/08/2005	Robert Puskeiler	SPM-390-A	8286

7590 11/08/2010  
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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1774

MAIL DATE	DELIVERY MODE
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11/08/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/540,299	<b>Applicant(s)</b> PUSKEILER ET AL.	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31-48 is/are pending in the application.
- 4a) Of the above claim(s) 1-20,31-34,47 and 48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,22 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 23-25 and 35-46 is/are objected to.
- 8) ☒ Claim(s) 1-29 and 31-48 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **FINAL OFFICE ACTION**

1. This application has been reassigned to Technology Center 1700, Art Unit 1774 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1774**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

### ***Election/Restriction Requirement***

2. Applicant's election without traverse of Group II (agitation system) in the reply filed on 4 NOV 2009 is acknowledged.
3. Claims 1-20, 31-34, and 47-48 are thereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4 NOV 2009.
4. This application contains claims 1-20, 31-34, and 47-48 drawn to a nonelected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Priority***

5. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

***Oath/Declaration***

6. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration filed 8 DEC 2005 in the first inventor section. See 37 CFR 1.52(c).

Applicant has agreed to submit a newly signed declaration is due course in the remarks filed 2 SEP 2010.

***Drawings***

7. The drawings filed 21 JUN 2005 are objected to because of the following informalities:

a. for the reasons on the PTO-948 form, reproduced below.

**INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

**Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks,

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section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for

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reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Form PTO-948 (Rev. 06/03) 10/540,299  
Application No.

U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

### NOTICE OF DRAFTSPERSON'S PATENT DRAWING REVIEW

The drawing(s) filed (insert date) 21 JUN 2005 are:

- A. approved by the Draftsperson under 37 CFR 1.84 or 1.152.  
B. ☒ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. Corrected drawings are required.

**1. DRAWINGS.** 37 CFR 1.84(a): Acceptable categories of drawings: Black ink or Color (3 sets required).

Color drawings are not acceptable until petition is granted. Fig(s)

Pencil and non black ink not permitted. Fig(s)

**2. PHOTOGRAPHS.** 37 CFR 1.84(b)

One (1) full-tone set is required. Fig(s)

Photographs may not be mounted. 37 CFR 1.84(e)

Photographs must meet paper size requirements of 37 CFR 1.84(f). Fig(s)

Poor quality (half-tone). Fig(s)

**3. TYPE OF PAPER.** 37 CFR 1.84(c)

Paper not flexible, strong, white, and durable.

Fig(s)

☒ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted.

Fig(s) 1-30

**4. SIZE OF PAPER.** 37 CFR 1.84(f): Acceptable sizes:

21.6 cm by 29.7 cm (DIN size A4) or

21.6 cm by 27.9 cm (8 1/2 x 11 inches)

All drawing sheets not the same size.

Sheet(s)

Drawings sheets not an acceptable size. Fig(s)

**5. MARGINS.** 37 CFR 1.84(g): Acceptable margins:

Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm

Margins not acceptable. Fig(s)

Top (T)

Left (L)

Right (R)

Bottom (B)

**6. VIEWS.** 37 CFR 1.84(h)

REMINDER: Specification may require revision to correspond to drawing changes, e.g., if Fig. 1 is changed to Fig. 1A, Fig. 1B and Fig. 1C, etc., the specification, at the Brief Description of the Drawings, must likewise be changed.

☒ Views not labeled separately or properly.

Fig(s) 12-14, 24-27

**7. SECTIONAL VIEWS.** 37 CFR 1.84(h)(3)

☒ Sectional designation should be noted with

Arabic or Roman numbers. Fig(s) 3-14, 24-26

**8. ARRANGEMENT OF VIEWS.** 37 CFR 1.84(i)

Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s)

**9. SCALE.** 37 CFR 1.84(k)

Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction.

Fig(s)

**10. CHARACTER OF LINES, NUMBERS, & LETTERS.** 37 CFR 1.84(j)

☒ Lines, numbers & letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s) 1-30

**11. SHADING.** 37 CFR 1.84(m)

Solid black areas pale. Fig(s)

☒ Solid black shading not permitted. Fig(s) 1-5, 16-22

**12. NUMBERS, LETTERS, & REFERENCE CHARACTERS.** 37 CFR 1.84(p)

☒ Numbers and reference characters not plain and legible. Fig(s) 1-30

☒ Figure legends are poor. Fig(s) 1-30

Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s)

English alphabet not used. 37 CFR 1.84(p)(2)

Fig(s)

Numbers, letters and reference characters must be at least 32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3). Fig(s)

**13. LEAD LINES.** 37 CFR 1.84(q)

Lead lines missing. Fig(s)

**14. NUMBERING OF SHEETS OF DRAWINGS.** 37 CFR 1.84(i)

Sheets not numbered consecutively, and in Arabic numbers beginning with number 1. Sheet(s)

**15. NUMBERING OF VIEWS.** 37 CFR 1.84(u)

Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s)

**16. DESIGN DRAWINGS.** 37 CFR 1.152

Surface shading shown not appropriate.

Fig(s)

Solid black surface shading is not permitted except when used to represent the color black as well as color contrast. Fig(s)

COMMENTS:

Date 26 FEB 2010

Attachment to Paper No. 20100226

Applicant has agreed to submit formal drawings to address the above deficiencies in the remarks filed 2 SEP 2010.

***Specification***

8. The Abstract of the Disclosure remains objected to because:
- a. it lacks substance as it is not an adequate and clear statement of the contents of the disclosure. A reading of the abstract does not provide the character of the subject matter covered by the disclosure. The abstract should be more comprehensive of the disclosed subject matter.

Correction is required. See MPEP § 608.01(b).

9. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01). The title should be revised to be commensurate with the elected invention.

***Claim Rejections - 35 U.S.C. § 112, second paragraph***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
11. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



Claim 26 appears to refer to the bores rather than the through channels (as recited in claim 21) since the bores are disposed along the circumference of the body while the through channels are disposed at the upper and under sides.

Claims 26 and 29: "a circumference" and "its circumferential edge" lacks antecedent basis since claim 21 does not set forth that the body possesses a geometry necessarily including a circumferential edge.

### ***Claim Rejections - 35 USC § 102***

12. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

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13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**14. Claims 21, 26, 28, and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schoenman et al. (US 3,881,701).**

The patent to Schoenman et al. discloses a basic body 10, 110, 210, or 310 having an upper side at 112 and an underside at 124, two opposing lateral bores 146, at least one first through-channel 126, 124, 138 extending from the underside to intersect with the two opposing lateral bores 146, at least one second through-channel at 142, 144 extending from the upper side 112 to intersect with at least one of the two opposing lateral bores 146; wherein the basic body is oval, egg-shaped or cuboid (Fig. 1); the basic body has recesses 30 along its edge; the bores and channels being uniformly spaced (Fig. 3).

**15. Claims 22 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by SU 1181699.**

SU 1181699 discloses a basic body 6 having an upper side and an underside (Fig. 1), through-channels 7 with a passage axis (alpha) at an angle between 0 and 90 degrees with a rotational axis of the body 6; said angle opening to the upper side of the agitation system (Fig. 1 and see the abstract); the basic body 6 having a circular cylindrical, elliptical, polygonal, square or rectangular shape (Figs. 1, 2, and 4).

***Allowable Subject Matter***

16. Claims 23-25 and 35-46 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

17. Applicant's arguments filed 2 SEP 2010 have been fully considered but they are not persuasive.

18. Schoenman et al. and SU 1181699 disclose the subject matter of the amended claims as set forth in the rejections. Note the abstract of SU '699 clearly teaches openings 7 disposed within the broad angular range alpha that extend through the extent of the body 6 from the underside to the top side of the body.

19. The objections to the declaration, drawings, and specification remain outstanding.

***Conclusion***

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT

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MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1774 whose telephone number is (571) 272-1139. The examiner can normally be reached on Monday - Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Additional assistance can be obtained via the Ombudsman Pilot Program is designed to enhance the USPTO's ability to assist applicants and/or their representatives with issues that arise during patent application prosecution. More specifically, if there is a breakdown in the normal prosecution process, the Ombudsman Pilot Program can assist in getting the process back on track. See <http://www.uspto.gov/patents/ombudsman.jsp> . If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley  
Primary Examiner  
Art Unit 1774

5 November 2010